

NTSB Order No. EA-4355

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 1st day of May, 1995

Docket SE-12836

United Kingdom to Deer Park, WA had been issued when in fact a permit valid only in United States airspace (i.e., from Bangor, Maine to Deer Park) had been issued. On appeal we affirmed that conclusion. We rejected the respondent's contention that the false entry was not material, reasoning that "the entry could have misled others, such as the aviation authorities in countries along the planned route of flight from the U.K. to the U.S. (Greenland, Newfoundland and Canada), into believing that whatever permission that might have been necessary to make the complete flight had been obtained." In its decision, the Court determined that materiality could not be predicated on this possibility absent proof, lacking in the administrative record, that the countries respondent might have landed in in fact "had laws which would be violated by the flight" of respondent's aircraft in their airspace. See Slip Op. at 5. Given this perceived evidentiary shortcoming in the Administrator's case, the Court, citing Janka v. NTSB, et al., 925 F.2d 1147, 1150 (9th Cir. 1991), ruled that the falsification charge under section 43.12 of the Federal Aviation Regulations ("FAR," 14 CFR Part 43) could not be sustained.²

Our judgment in Order EA-3766 that respondent lacked qualification, and therefore should have his certificates revoked, rested essentially on the falsification charge alone. As to the other charges in the proceeding upheld by the Board and the Court (namely, sections 91.405(a) and (b), failure to meet inspection and maintenance record entry requirements; 91.409(a), operation of an aircraft in need of annual inspection; and 91.203(a), operation of an aircraft without a registration certificate), we think that a 90-day suspension of respondent's certificates would be consistent both with precedent involving multiple charges of the kind at issue here and with the Administrator's sanction guidelines for such offenses. See FAA Order 2150.3A, Appendix 4, "Enforcement Sanction Guidance Table."

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's November 3, 1992 Amended Emergency Order of Revocation is modified to provide for a 90-day suspension of respondent's private pilot and mechanic certificates.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above order.

²The court in Janka reiterated earlier Ninth Circuit precedent holding that the three elements of an intentional false statement are falsity, knowledge, and materiality.